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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Review of Part 15 and Other Parts)
Of the Commission's Rules)
)
Petition for Waiver of Section 15.37(k))
of the Commission's Rules)

01-278

PETITION FOR WAIVER ON BEHALF OF RADIOSHACK

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TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION AND BACKGROUND	2
II. THE COMMISSION'S TIMEFRAME FOR COMPLIANCE WITH ITS ORDER INADVERTENTLY, BUT UNDULY, SUBJECTS RADIOSHACK TO SIGNIFICANT ECONOMIC AND LOGISTICAL BURDENS	4
A. RadioShack's Distribution Process from Time of Order Placed to the Stocking of Shelves Requires an Average Lead Time of Six Months, making it Impossible to Sell, Remove or Stop the Distribution of Current Inventory and to Restock with Compliant Units in the Established Timeframe	5
B. Without a Waiver, RadioShack Unnecessarily Faces Significant Economic Losses	7
C. As a Large, Private-Label Retailer, RadioShack is Disproportionately Burdened by the Commission's Order	9
III. RADIOSHACK'S PRODUCTS EMIT LESS HARMFUL SIGNALS THAN MOST OF THE PRODUCTS CONSIDERED BY THE COMMISSION IN ITS PROCEEDING	11
IV. THE TIMEFRAME FOR COMPLIANCE SET FORTH BY THE COMMISSION'S ORDER IS UNPRECEDENTED UNDER PART 15	13
V. RADIOSHACK'S REQUEST FOR WAIVER SERVES THE PUBLIC INTEREST AND DOES NOT COMPROMISE THE PURPOSE OF THE UNDERLYING RULE	16
A. A Waiver Serves the Public Interest by Avoiding Significant Harm To the Operations of a Major Retailer	16
B. The Public Interest Purpose of the Underlying Rule is Not Frustrated by a Waiver for RadioShack	17
VI. CONCLUSION	18

SUMMARY

On July 12, 2002, the Commission adopted a new requirement that radar detectors manufactured domestically or imported into the United States comply with radiated emission limits in the 11.7-12.2 GHz band under Part 15 of its rules, and set forth a timeframe by which manufacturers and retailers must comply. By this petition, RadioShack Corporation ("RadioShack") hereby seeks an immediate limited waiver of Section 15.37(k) of the Commission's rules, so that it may continue sales of radar detectors that were already ordered and manufactured at the time of the Order's publication (July 29, 2002) and to continue these sales through March 30, 2003, when new, compliant products are more likely to be available.

Special circumstances warrant grant of the requested waiver. Under the current schedule, RadioShack would be required to cease marketing any non-compliant product 30 days after the last permissible manufacturing date. RadioShack's distribution process from time of order placed to the stocking of shelves, however, requires an average lead time of six months, making it impossible to sell, remove or stop the distribution of current inventory and to restock with compliant units in the established timeframe. RadioShack currently has an inventory of more than 100,000 radar detectors, worth several million dollars (at cost value), in its distribution pipeline. These units were of course compliant with all applicable laws and regulations at the time that the orders for the product were placed and filled.

Application of the 60-day marketing deadline will impose a serious economic burden on RadioShack to comply within the unprecedented brief transition period. First, it would require RadioShack to cease sales of in-inventory units that will not meet the emissions limit at the end of September. Second, due to the required lead-time both for any manufacturer to fill a new order and for RadioShack's distribution system to actually deliver the new units to its retail

shelves, it will be virtually impossible for RadioShack to replace current units with new inventory that satisfies the emissions limit within a timely manner. The combination of lost inventory and lost sales may result in losses for RadioShack in the several millions of dollars.

In addition, RadioShack has compiled specific information regarding the signal levels emitted by the specific radar detectors that RadioShack currently has in its inventory and that may enter the marketplace between now and March 30, 2003. These independent testing results indicate that the RadioShack products are much less likely to cause interference than those tested by the Commission's lab. Furthermore, none of the satellite companies or industry associations party to the proceeding raised specific instances of interference caused by any of RadioShack's products, and RadioShack has never received a complaint of interference from any consumer, government agency, or private sector entity relating to its radar detectors. Thus, the public interest will be served by avoiding the unnecessary economic loss that will result with the application of the new marketing restriction, and, at the same time, the underlying purpose of the rule will not be undermined if RadioShack is permitted to sell currently permissible units until March 30, 2003.

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RadioShack Corporation ("RadioShack"), by its undersigned attorneys and pursuant to Section 1.3 of the Commission's rules,¹ hereby seeks an immediate waiver of Section 15.37(k) of the Commission's rules. The cited provision requires RadioShack to cease marketing, no later than September 27, 2002, radar detectors that do not comply with radiated emission limits in the 11.7-12.2 GHz band under Section 15.109(a) of the Commission's rules. Waiver of Commission rules is permitted upon a showing of "good cause."² The Commission has interpreted the "good cause" standard to require the petitioner to show that "special circumstances warrant deviation from the general rule and such deviation will serve the public interest."³ The Commission and courts have additionally held that a waiver of a rule is warranted where an individual party demonstrates that the results of a waiver would not undermine or compromise the fundamental purpose in the Commission's rule.⁴

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁴ *Wait Radio*, 418 F.2d at 1157; *Midwest Communications, Inc. v. FCC*, 7 FCC Rcd 159, 160 (1991).

For the reasons stated below, RadioShack respectfully requests a waiver of Section 15.37(k) to continue sales of radar detectors that were already ordered and manufactured, and thus in its distribution pipeline at the time of the Order's publication (July 29, 2002) and to continue these sales through March 30, 2003 when new, compliant products are more likely to be available. Due to the urgent nature of the facts presented below, RadioShack respectfully requests the Commission to grant this waiver immediately.

I. INTRODUCTION AND BACKGROUND

On July 12, 2002, the Commission approved its First Report and Order to require that radar detectors manufactured domestically or imported into the United States comply with radiated emission limits in the 11.7-12.2 GHz band under Part 15 of its rules, and that all radar detectors be certified to demonstrate compliance with these limits before they are marketed.⁵ As the Commission stated at the time, the purpose of this action is to significantly reduce interference from radar detectors to very small aperture satellite terminals (VSATs).⁶

RadioShack does not object to the emission limits imposed on radar detectors by the Commission's July Order.⁷ RadioShack, however, requests a waiver to the timeframe for compliance set forth by the Order. The Commission has required that no non-compliant units may be sold following 60 days after publication of the Order in the Federal Register, or September 27, 2002. This leaves an inadequate amount of time for RadioShack to remove its current inventory from its distribution chain, without suffering substantial and disproportionate

⁵ *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, First Report and Order, FCC 02-211, released July 19, 2002, 67 Fed. Reg. 48989, published July 29, 2002, at ¶1 ("First Report and Order").

⁶ *Id.*

⁷ RadioShack Corporation is a private-label, consumer electronics retail chain with 7,200 stores throughout the United States.

economic losses. In fact, the distribution deadline leaves only 30 days from the date on which manufacturing of currently compliant units must cease (August 28, 2002) for any retailer to remove, or stock, market, and sell its inventory of current units. The Commission apparently established the above dates with the intention of limiting the severity of any last minute influx of radar detectors causing harmful interference. However, in the context of this waiver request, the Commission should balance this interest against 1) the serious economic burden placed on RadioShack to comply within the unprecedented brief timeframe for phasing in compliant products and 2) the fact that RadioShack's products, while not within compliance of the new limits, have significantly lower emission levels – and thus do not pose the same threat of interference - than the majority of the products inspected by the Commission.

The Commission's timeframe was established in the absence of any record as to retailers' actual timeframes for distribution and retail cycles, and as a result, does not reflect a reasonable estimation of how the products in question – orders for most of which are filled, shipped, and distributed in six month cycles – may be replaced on store shelves by products that meet the newly imposed standard. As demonstrated below, RadioShack is particularly aggrieved in this regard because it is the only private-label retailer of radar detectors in the United States.

In this case, RadioShack now demonstrates the special circumstances that warrant deviation from the Commission's schedule, as well as the public interest reasons why such deviation is warranted. The distribution deadline currently imposed by the Commission's rules leaves RadioShack facing significant losses from its substantial existing inventory - ordered and manufactured well before the July 29 publication of the Commission's Order. The distribution deadline imposed by the rules also does not permit RadioShack to restock its stores with compliant goods in a timely manner. As a result, in the absence of a waiver, RadioShack will unfairly and disproportionately bear the economic burden of compliance with the new standard.

Therefore, RadioShack requests that the Commission expeditiously grant a waiver to permit RadioShack to sell its current inventory of any permissible equipment already ordered and manufactured at the time the Commission's Order was published (July 29, 2002) and that the waiver permit such sales until March 30, 2003, when new products will be available to RadioShack. In recognition of the importance in promoting the use of compliant radar detectors, RadioShack will additionally notify its customers through its regular mailings of the availability of new products that comply with the Commission's Order once they are in stock.

II. THE COMMISSION'S TIMEFRAME FOR COMPLIANCE WITH ITS ORDER INADVERTENTLY, BUT UNDULY, SUBJECTS RADIOSHACK TO SIGNIFICANT ECONOMIC AND LOGISTICAL BURDENS

The Commission's Order provides that all radar detectors marketed beginning sixty days after publication of the Order (September 27, 2002) must comply with the new emissions limits.⁸ The Order further provides that manufacturers of radar detectors must comply with the new emissions limits beginning thirty days from the date of the Order's publication,⁹ permitting the continued manufacturing of units that exceed the new emissions limits through August 28, 2002. The Commission indicates that the plan set forth will "provide a reasonable amount of time for manufacturers, wholesalers and retailers to be notified of the rule changes so they can cease marketing non-compliant units."¹⁰ As demonstrated further below, however, these timeframes do not provide a reasonable period of time for RadioShack to cease its distribution and marketing for significant amounts of inventory already in its distribution pipeline and, in fact, the

⁸ *First Report and Order* at ¶15; 67 Fed. Reg. 48989 (July 29, 2002).

⁹ *Id.*

¹⁰ *Id.*

sixty day timeframe will preclude RadioShack from selling non-compliant units that may be permissibly manufactured until August 28, 2002.

Indeed, to facilitate compliance as quickly as possible, RadioShack began ordering compliant units from its manufacturer in July, as soon as the Commission approved its Order. Still, because the manufacturer must retool its machinery to make the new, compliant products, those units will not be in stores until sometime during the first quarter of 2003. Thus, as applied to RadioShack's standard distribution practices, the 30-day manufacturing allowance itself does not provide even the brief intended transition time because RadioShack will be unable to order, stock and sell any of those later produced units within the 30-day window between the manufacturing deadline and marketing deadline (i.e., between August 28, 2002 and September 27, 2002). Therefore, it cannot be fairly said that, for RadioShack, a "reasonable amount of time" has been provided to cease marketing units will still be compliant until August 28, 2002.

A. RadioShack's Distribution Process from Time of Order Placed to the Stocking of Shelves Requires an Average Lead Time of Six Months, Making it Impossible to Sell, Remove or Stop the Distribution of Current Inventory and to Restock with Compliant Units in the Established Timeframe

RadioShack currently has an inventory of more than 100,000 radar detectors, worth several million dollars (at cost value), in its distribution pipeline.¹¹ Approximately two-thirds of these radar detectors are "on-hand" in the United States, meaning that they are either in RadioShack's distribution centers or are on the shelves of one of RadioShack's 7,200 stores

¹¹ The terms pipeline and inventory are both defined to include any products that were manufactured prior to the Order's publication and that are somewhere between the point of shipment to the United States and being stocked on shelves in RadioShack stores.

throughout the country. The other one-third of inventory is currently in transit between Asia, where they are manufactured, and RadioShack's distribution centers. RadioShack placed orders for a substantial portion of this inventory during the first quarter of 2002 – when no emissions limits had been applied to unintended radiators operating above 960 MHz. Many of the later units are not expected to arrive in the United States until this fall.

Typically, RadioShack's manufacturer requires a 90-day ordering lead-time prior to shipment. Transit time from vendor to distribution centers is another 60 days – which includes shipping this particular product from Asia to the United States. Of course, the distribution centers are still not the final destination, some five months after the order. Once in the distribution centers, the process of inspection, breaking down the shipments for individual retail stores, and domestic shipment requires another two to four weeks. The units currently in inventory were of course compliant with all applicable laws and regulations at the time that the orders for the product were placed and filled.

Thus, the 60-day marketing deadline presents RadioShack with extreme economic loss from two perspectives. First, it would require RadioShack to cease sales of in-inventory units that will not meet the emissions limit at the end of September, even though the great majority of such units were ordered, shipped, and distributed for retail sale – or are in this pipeline – well in advance of the Commission's standards being applied. Second, due to the required lead-time both for any manufacturer to fill a new order and for RadioShack's distribution system to

actually deliver the new units to its retail shelves, it will be virtually impossible for RadioShack to replace current units with new inventory that satisfies the emissions limit in a timely manner.¹² Given that the record contains virtually no discussion of this matter, it is clear that the Commission did not intend to impose this hardship on RadioShack.

B. Without a Waiver, RadioShack Unnecessarily Faces Significant Economic Losses

Special circumstances warrant a waiver due to the significant economic losses RadioShack faces if it is forced to comply with the brief transition timeframe established by the Commission's Order. Because of the distribution periods described above, these losses have been unfairly shifted onto RadioShack due to the volume of inventory already in the Company's pipeline. Indeed, there are no options presented, other than waiver, by which RadioShack can mitigate these severe and disproportionate losses.

If RadioShack pulls the currently available units from its inventory, the cost just to collect these products and either return or destroy them alone would be approximately one hundred thousand dollars. In addition to those costs, there is likely to be no recourse for RadioShack to receive a refund from its foreign manufacturers for the goods returned. At the time the order was placed for these products, arguably they were in compliance with all applicable laws and regulations. Thus, RadioShack is likely faced with the loss of several million dollars worth of products purchased several months prior to the Commission's Order. In addition to these losses, RadioShack has spent significant funds on advertising already placed to

¹² RadioShack is unable to turn to other manufacturers to restock more quickly with compliant goods. First, as discussed further in Section II. C, *infra*, any compliant product currently available in the market is not sold for private-label purposes. Second, even if such products were available, no manufacturer in the United States is currently equipped to supply RadioShack with the volume required for 7,200 stores.

sell and market the current product inventory that, if removed from store shelves by September 27, will no longer be available to customers.¹³

As an alternative to product removal, RadioShack has explored both the options of retooling its current inventory to make it compliant and a massive sales effort. Retooling its inventory is not an option, however, because the expense of doing so would double the original cost of the products. Thus, without a waiver, RadioShack will be required to minimize its losses by selling as much of remaining inventory as possible by September 27, 2002. However, in order to do so, it will need to create a "fire sale" as soon as possible, which itself would require an expensive, national advertising campaign and would result in substantial losses incurred by reducing the retail prices for the units. Finally, as a matter of Company policy, RadioShack will not "dump" its inventory abroad and risk either brand dilution or liabilities created by products that often make it back across our borders illegally. This policy arises out of RadioShack's need, as a private-label retailer, to be vigilant in protecting its brand name.

Moreover, RadioShack will face additional losses because it will likely be unable to restock its stores with compliant goods during the fourth quarter of this year. To provide the Commission an estimate of potential lost sales to the Company, RadioShack anticipated sales of several million dollars during the fourth quarter of 2002 and only slightly fewer sales during the first quarter of 2003. Thus, RadioShack could face losses of several millions dollars in sales alone. RadioShack prides itself on customer loyalty and long-term customer relationships. Without a product to sell, RadioShack also has significant concerns about the longer-term effects

¹³ RadioShack markets its products mostly through inserts received in the mail or in newspapers. This form of advertising is prepared and paid for months in advance.

caused by the potential loss of traditional good will and loyalty by its customers if it simply cannot meet customer demand for a traditionally stocked product.

Finally, economic losses will not be limited to the Company itself, but its sales employees will be affected as well. The incomes of these employees are based in part on sales commissions. If the radar detector product line is discontinued from September 27 until the shelves can be restocked with compliant units, the several million dollars in lost sales to the Company will also be a direct loss to those sales employees with no units to sell.

C. As a Large, Private-Label Retailer, RadioShack is Disproportionately Burdened by the Commission's Order

The Commission's Order imposes unique burdens on a large, private-label retailer, such as RadioShack, which further constitutes special circumstances meriting a waiver. The Commission's Notice of Proposed Rulemaking did not address issues relating to proposed implementation schedules and neither RadioShack nor other retailers were party to the proceeding. Thus, the Commission's selection of a 60-day marketing deadline does not account for the distribution and replacement of non-compliant products by a private-label retailer, like RadioShack.

While RADAR has indicated in several filings that seventy-three percent of its members' products now being shipped are in compliance with the emission limits,¹⁴ these products have not been made available for private-label use, like those sold by RadioShack. In addition, the

¹⁴ See, e.g., Motion for Stay of RADAR Members, ET Docket No. 01-278, RM-9375, RM-10051 (filed July 26, 2001), at 3 ("*RADAR Motion for Stay*"); Petition for Partial Reconsideration of RADAR Members, ET Docket No. 01-278, RM-9375, RM-10051 (filed July 26, 2001), at 2 ("*RADAR Petition*").

percentage of compliant product versus the percentage of non-compliant product in retailer inventories is largely unknown to the Commission, according to its Record. Currently, 100 percent of RadioShack's inventory is now non-compliant with the standards to be met by retailers as of September 27. As stated above, if RadioShack is forced to remove all of these radar detectors from store shelves, it is unlikely that compliant replacement product would be delivered in stores in time for the busiest retail season of the year (and the most important quarter for the U.S. economy). As stated earlier, even if manufacturers were to commence making compliant products available for private-label use, none of RADAR's members have on-hand the quantities necessary to stock RadioShack's 7,200 stores.

In addition, there is significant disparity between the potential effect of the Commission's Order on a large retailer like RadioShack and the small retailers. Assuming that all retailers - regardless of size - are aware of the Commission's Order, it is substantially less burdensome for small "mom and pop" retailers to comply with the Commission's deadlines than a large retailer like RadioShack. A single retailer or small chain retailer can, without much difficulty, remove and replace a few hundred units in a timely manner. Changing course for a retailer with 7,200 stores and an inventory in excess of one hundred thousand radar detectors, however, is a difficult and lengthy process. Much like a naval vessel, RadioShack is not able to turn its operations on a dime. Thus, RadioShack will be harmed disproportionately by the established transition timeline, despite all efforts to comply with the Order, with substantial economic loss and potentially bare shelves.

III. RADIOSHACK'S PRODUCTS EMIT LESS HARMFUL SIGNALS THAN MOST OF THE PRODUCTS CONSIDERED BY THE COMMISSION IN ITS PROCEEDING

The Commission has an important role in monitoring for and protecting against harmful interference. Here, the Commission has made the determination that many radar detectors marketed today emit high-level signals that can cause harmful interference to VSATs.¹⁵ Because of the stated burdens associated with determining which specific products cause harmful interference and with what frequency, the Commission has determined that a general rule to apply Part 15 emission limits broadly to all radar detectors is necessary to control the interference issues raised by the satellite industry.¹⁶ In addressing this matter, however, it is certainly also appropriate for the Commission to implement its chosen cure for this issue mindful of the unique economic and logistical issues facing RadioShack, as a private-label retailer, as it works to implement the Commission's mandate. Having outlined the severe logistical and economic burdens placed on RadioShack by the Commission's Order, RadioShack has also compiled specific information regarding the signal levels emitted by the specific radar detectors that RadioShack currently has in its inventory and that may enter the marketplace between now and the March 30, 2003 deadline requested.¹⁷ Plainly stated, these products are much less likely to cause interference than those tested by the Commission's lab. Indeed, none of the satellite companies or industry associations party to the proceeding raised specific instances of interference caused by any of RadioShack's products. In addition, RadioShack has never

¹⁵ *First Report and Order* at ¶15.

¹⁶ *First Report and Order* at ¶13.

¹⁷ The Commission's lab did not test these specific products during the proceeding.

received a complaint of interference from any consumer, government agency, or private sector entity relating to its radar detectors.

RadioShack currently carries four lines of radar detectors in its stores. When the Commission's Order was issued, RadioShack submitted the four products for independent testing of their emission levels.¹⁸ While the four products exceed the Commission's newly imposed emission limit, their radiated emission levels only ranged between 27.9 and 37 dB over the Commission's new limit; the products tested by the Commission's lab ranged between 35 dB and in excess of 50 dB over the limit. When RadioShack's independent test results are plotted against the Commission's lab test data, and the products are arranged from "most over" Part 15 limits in the 11.7-12.2 GHz VSAT band to "least over" the limit, RadioShack's products have lower emission levels than all but one of the competitor products the Commission lab tested.¹⁹ Because these tests demonstrate that RadioShack's products have lower emission levels, they also are significantly less likely to cause harmful interference to VSATs.²⁰ This fact is also confirmed by the lack of any evidence in the record of specific incidence involving a RadioShack radar detector.

Moreover, RadioShack understands that the satellite industry's concerns have primarily arisen from interference caused by circuitry adjustments in more recent models of radar detectors

¹⁸ These tests were performed under the same guidelines as those the Commission's lab performed on competitor products.

¹⁹ See Appendix A on the test data performed by Professional Testing, Inc. (PTI) and completed on August 12, 2002. PTI is an independent laboratory specializing in FCC and HAUS testing. They are located in Round Rock, Texas and have been conducting Part 15 testing for 15 years.

²⁰ The Commission confirms the connection between the level of radiated emissions and the degree to which harmful interference is likely to occur. *First Report and Order* at ¶10, 13.

available during the last two years.²¹ RadioShack has sold radar detectors made by the same single manufacturer for at least the last ten years. According to the manufacturer, the RF circuitry has not changed in the models sold by RadioShack during at least the last five years. This statement is supported by additional independent testing of three five-year old RadioShack radar detector models and the four models that RadioShack sells today. The comparison of this test data demonstrates that the emission levels of the old and new RadioShack radar detectors are relatively unchanged.²² This test data, therefore, further indicates that RadioShack's current radar detectors (or even older models) are not likely to be the primary culprits causing the satellite industry's recent interference concerns.

Thus, though the current RadioShack inventory does not meet the new emissions limit, RadioShack submits that its products are substantially less likely to cause interference than the products considered by the Commission and identified by the satellite industry.

IV. THE TIMEFRAME FOR COMPLIANCE SET FORTH BY THE COMMISSION'S ORDER IS UNPRECEDENTED UNDER PART 15

The brief transition timeframe for compliance set forth in the Commission's Order is unprecedented under Part 15.²³ Plainly, this is not the first time that the Commission has

²¹ *First Report and Order* at ¶3; *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, Notice of Proposed Rulemaking and Order, released October 15, 2002, at ¶12.

²² See Appendix A, Tables 15 and 16.

²³ See, e.g., *Revision of Part 15 to Extend the Receiver Certification Program to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 FCC2d 687, 693 (1976), clarified 62 FCC2d 623 (1976); *Amendment of Part 15 to Redefine and Clarify the Rules Governing Restricted Radiation Devices and Low Power Communication Devices*, 79 FCC2d 67,90 (1980), modifying 79 FCC2d 28, 56 (1979); *Amendments of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), recon. denied, 9 FCC Rcd 3386 (1994); *Amendment of Parts 2 and 15 to Further Ensure that Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), recon. on other grounds, 16 FCC Rcd 11373 (2001).

imposed or revised limits applicable to an unlicensed product already on the market. However, on those other occasions, the Commission has recognized the realities of the distribution pipeline, such as RadioShack's, in imposing regulation on consumer products for the first time.²⁴ On none of these prior occasions has the Commission contemplated as short a timeframe for compliance as required by the recent Order.

In the underlying rulemaking, the satellite industry indicates that this short timeframe is necessary due to the extreme interference caused by radar detectors.²⁵ The satellite industry cannot square this argument - and the specific timeframe it endorses - with the precedent set forth by the Commission under Part 15. On several occasions, the Commission has found it necessary to require product compliance with Part 15, but in each of those cases the Commission has refrained from imposing such severe and impractical distribution deadlines on manufacturers and retailers.²⁶ In fact, in its two proceedings to prohibit the marketing of radio scanners that intercepted cellular radio signals, the Commission initially provided manufacturers twelve months to comply with its order and then several years later provided six months for

²⁴ *Id.*

²⁵ See Joint Opposition of Satellite Industry Association, Spacenet Inc., and Microspace Communications Corporation to Motion for Stay, ET Docket 01-278, filed Aug. 1, 2002 ("SIA Joint Opposition").

²⁶ See, e.g., *Revision of Part 15 to Extend the Receiver Certification Program to Revise the Technical Specifications for Receivers, and to Make Other Changes*, 60 FCC2d 687, 693 (1976), clarified 62 FCC2d 623 (1976); *Amendment of Part 15 to Redefine and Clarify the Rules Governing Restricted Radiation Devices and Low Power Communication Devices*, 79 FCC2d 67,90 (1980), modifying 79 FCC2d 28, 56 (1979); *Amendments of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), recon. denied, 9 FCC Rcd 3386 (1994); *Amendment of Parts 2 and 15 to Further Ensure that Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), recon. on other grounds, 16 FCC Rcd 11373 (2001).

manufacturers to comply with its new tightened regulations.²⁷ In fact, in the latter of these two proceedings, the Commission explicitly considered transition issues expressed by manufacturers and retailers, including RadioShack (then known as Tandy Corporation), and similar to those raised here.²⁸ Indeed, the Commission's Notice in that proceeding had originally proposed only a 90-day timeframe, however, the Commission found in its Order that a six month timeframe was necessary to provide manufacturers and retailers additional time to "design and bring to market scanning receivers that comply with these new rules," even though it also concluded that scanning receivers raised significant cell phone privacy concerns.²⁹

Grant of RadioShack's waiver is consistent with the timeframes and rationale presented by Commission precedent in Part 15 proceedings. As demonstrated herein, RadioShack does not currently have access to compliant radar detectors to replace its current inventory and needs an additional six months from the effective marketing date in order to do so. During this six month period, RadioShack respectfully requests the Commission to grant a waiver permitting the sale of RadioShack's current inventory, which as demonstrated in Section D above emits at lower levels than most of the products the Commission tested during its proceeding.

²⁷ 8 *Amendment of Parts 2 and 15 to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations*, 8 FCC Rcd 2911, 2913 (1993), *recon. denied*, 9 FCC Rcd 3386 (1994); *Amendment of Parts 2 and 15 to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), *recon. on other grounds*, 16 FCC Rcd 11373 (2001). In neither proceeding did the Commission set forth a compliance deadline for retailers.

²⁸ *Amendment of Parts 2 and 15 to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals*, 14 FCC Rcd 5390, 5403 (1999), *recon. on other grounds*, 16 FCC Rcd 11373 (2001), ¶ 38-39.

²⁹ *Id.*

V. **RADIOSHACK'S REQUEST FOR WAIVER SERVES THE PUBLIC INTEREST AND DOES NOT COMPROMISE THE PURPOSE OF THE UNDERLYING RULE**

The Commission has frequently held that it “may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.”³⁰ Grant of the waiver requested under the circumstances presented would not frustrate the public purpose of the underlying rule and would serve the public interest by mitigating significant, unnecessary economic loss on a nationally prominent company in good-standing. Thus, the Commission should grant the waiver request consistent with the waiver standards set forth by the Commission’s rules and by legal precedent.³¹

A. **A Waiver Serves the Public Interest by Avoiding Significant Harm to the Operations of a Major Retailer**

As the facts presented in this Petition demonstrate, compliance under the Commission’s established timeframe would put RadioShack at least temporarily, if not permanently, out of the business of selling radar detectors, with a potential economic loss in the several millions of dollars. Avoiding this unnecessary economic loss through the grant of the requested waiver would serve the public interest. Under the timeframes currently established, RadioShack’s

³⁰ *In the Matter of Astrolink International LLC; Application to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service*, 2002 FCC Lexis 2962 (released June 18, 2002) at *7 (citing *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir.1969)). See also *In the Matter of Fisher Ranch; Application for Assignment of License and Modification of Private Land Mobile Radio Service Station and Request for Waiver of Commission Rules*, 2002 FCC Lexis 186 (released January 14, 2002).

³¹ *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). *Midwest Communications, Inc. v. FCC*, 7 FCC Rcd 159 (1991).

shelves would likely be bare for the entire radar detector product area for at least a few months. Such consequences come at a time of economic uncertainty at the national level, which likewise affects retail operations. The potential harm from the loss of marketable products is further exacerbated because the current deadline will become effective just before a retailer's busiest time of the year, thus creating an even more severe economic effect with the greater loss in sales revenue.

The Commission's timeframe may have longer-term effects on RadioShack as well. It is impossible to calculate the damaging effect that a period without product will have on future customer relations. It is in the public interest for the Commission to avoid imposing this needless degree of harm on a publicly held company. It is additionally in the public interest that the Commission limit the harm caused to RadioShack's approximately 25,000 store employees. These employees receive sales commissions as a portion of their incomes. With the loss of millions of dollars in sales, the effect on employees is not inconsequential.

B. The Public Interest Purpose of the Underlying Rule is Not Frustrated by a Waiver for RadioShack

The satellite industry has voiced concerns regarding a significant influx of non-compliant products into consumers' hands between now and any marketing deadline that is set.³² While the satellite industry relates this influx to the creation of additional interference, RadioShack submits that in granting the waiver, the quantity of new products in the market would be fixed and their effects practically nonexistent. At most, RadioShack assures the Commission that its sales of non-compliant inventory will be limited to that inventory that was already ordered and manufactured at the time of the Commission's Order was published, July 29, 2002. When

³² See, e.g., SIA Joint Opposition, at 6-8.

compared with the 25 million radar detectors already in the marketplace the additional effect on potential interference is negligible.

Perhaps more important to addressing any concerns of the satellite industry, RadioShack has demonstrated that the emissions of its radar detectors are lower than almost all of those tested by the Commission. Additionally, the industry has never raised, either publicly in the Commission's proceeding or privately to RadioShack, any concerns regarding interference caused by one of its radar detectors. Thus, there is no evidence that the continued availability of the limited product inventory after September 27, 2002 through March 30, 2003 is likely to cause any additional interference. Finally, RadioShack assures the Commission that when compliant products reach its shelves no later than the end of the first quarter, the Company will inform its customers through its regular mailings of the availability of products that comply with the Commission's new Part 15 requirements. Through its mail inserts, RadioShack regularly reaches forty million customers currently in the Company database.

VI. CONCLUSION

For these reasons, RadioShack respectfully requests a waiver of Section 15.37(k) of the Commission's rules. Specifically, RadioShack requests that it be permitted to continue sales of radar detectors that were already ordered and in its distribution pipeline at the time of the Order's publication and to continue these sales through March 30, 2003. In the absence of a waiver, RadioShack will uniquely suffer significant economic and logistical hardship. In addition, grant of the limited waiver will serve the public interest and will not frustrate the underlying purpose of the rule. RadioShack has further demonstrated that the waiver is necessary in order to receive new inventory, and that while sales of the current products would continue, they are finite in number and limited in the potential for interference.

Finally, RadioShack respectfully requests that the Commission consider the waiver request on an expedited basis. With the applicable deadline quickly approaching, RadioShack faces immediate and significant potential harm and must quickly implement a retail strategy upon Commission action on the request.

Respectfully submitted,

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Dated: August 13, 2002

APPENDIX A

Results of Testing

Performed by

Professional Testing, Inc.

Date: August 12, 2002

Measurements of emissions from "old" and "new" models of radar detector.

The following tables contain the horizontal and vertical emissions data taken in "average" mode, for the "old" and "new" detectors. The measurement conditions were the same as those under which four more recent models were evaluated. The data given represent average readings only.

The data are arranged as follows:

Tables 1-3: "Old" horizontal

Tables 4-7: "New" horizontal

Tables 8-10: "Old" vertical

Tables 11-14: "New" vertical

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.713	92.7	63.5	29.2
11.772	92.2	63.5	28.7
11.686	91.9	63.5	28.4
11.682	91.8	63.5	28.3
11.582	91.9	63.5	28.3
11.507	89.4	63.5	25.9

Table 1. 22-1674 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.650	92.1	63.5	28.6
11.710	91.4	63.5	27.9
11.768	90.2	63.5	26.7
11.613	89.9	63.5	26.4
11.560	88.0	63.5	24.5
11.497	87.2	63.5	23.7

Table 2. 22-1676 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.553	91.5	63.5	28.0
11.591	91.1	63.5	27.6
11.635	89.4	63.5	25.9
11.682	89.4	63.5	25.9
11.755	88.5	63.5	25.0
11.517	91.3	63.5	27.8

Table 3. 22-1675 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.813	93.2	63.5	29.7
11.641	94.0	63.5	30.5
11.471	93.9	63.5	30.4

Table 4. 22-1686 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.805	91.4	63.5	27.9
11.595	88.1	63.5	24.6
11.473	90.5	63.5	27.0

Table 5. 22-1685 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dB μ V)	Limit (dB μ V)	Margi n (dB)
11.816	94.4	63.5	30.9
11.630	95.0	63.5	31.5
11.515	85.1	63.5	31.6

Table 6. 22-1684 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dB μ V)	Limit (dB μ V)	Margi n (dB)
11.782	98.2	63.5	34.7
11.641	98.1	63.5	34.6
11.468	91.8	63.5	28.3

Table 7. 22-1682 emissions data (horizontal polarization, average mode).

Freq. (GHz)	Corrected Level (dB μ V)	Limit (dB μ V)	Margi n (dB)
11.703	104.4	63.5	40.9
11.752	103.0	63.5	39.5
11.648	103.9	63.5	40.4
11.590	103.7	63.5	40.2
11.801	100.7	63.5	37.2
11.550	102.2	63.5	38.7
11.488	101.6	63.5	38.1

Table 8. 22-1674 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dB μ V)	Limit (dB μ V)	Margi n (dB)
11.681	103.0	63.5	39.5
11.730	102.5	63.5	39.0
11.796	99.5	63.5	36.0
11.416	98.2	63.5	34.7
11.545	101.2	63.5	37.7
11.601	102.5	63.5	39.0

Table 9. 22-1676 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.681	105.0	63.5	41.5
11.732	103.9	63.5	40.4
11.808	99.0	63.5	35.5
11.625	104.8	63.5	41.3
11.561	103.7	63.5	40.2
11.518	102.9	63.5	39.4

Table 10. 22-1675 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.466	101.0	63.5	37.5
11.608	100.6	63.5	37.1
11.813	99.1	63.5	35.6

Table 11. 22-1686 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.818	93.4	63.5	29.9
11.586	96.9	63.5	33.4
11.481	94.9	63.5	31.4

Table 12. 22-1685 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.470	94.4	63.5	30.9
11.495	95.0	63.5	31.5
11.602	85.1	63.5	31.6
11.727	93.8	63.5	30.3

Table 13. 22-1684 emissions data (vertical polarization, average mode).

Freq. (GHz)	Corrected Level (dBμV)	Limit (dBμV)	Margi n (dB)
11.768	100.5	63.5	37.0
11.565	96.9	63.5	33.4
11.446	101.0	63.5	27.5

Table 14. 22-1682 emissions data (vertical polarization, average mode).

These data show that in both horizontal and vertical polarizations, emissions from the old and new units are similar. They can be compared using simple averages, as in tables 15 and 16.

“Old” Model No.	Average Margin (dB)	“New” Model No.	Average Margin (dB)
22-1674	28.3	22-1686	30.2
22-1676	26.3	22-1685	26.5
22-1675	26.7	22-1684	31.3
		22-1682	32.5

Table 15. “Old” and “new” model comparison, horizontal polarization.

“Old” Model No.	Average Margin (dB)	“New” Model No.	Average Margin (dB)
22-1674	39.3	22-1686	36.7
22-1676	37.7	22-1685	31.6
22-1675	39.7	22-1684	31.1
		22-1682	32.6

Table 16. “Old” and “new” model comparison, vertical polarization.

In both cases, emissions levels are higher when measured in vertical polarization than in horizontal. The emissions of the “new” units are about 2 dB higher than those of the “old” units in horizontal mode. They are 3-4 dB lower than those of the “old” units in vertical mode.